

General Information Letter: No subtraction modification is allowed for a charitable contribution carryover that is not allowed in computing taxable income of a corporation.

March 13, 2002

Dear:

This is in response to your letter dated March 6, 2002, in which you request a Letter Ruling. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information, the regulation governing the issuance of letter rulings, 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department, can be accessed at the Department's website. That address is www.revenue.state.il.us/legalinformation/regs/part1200.

The nature of your question and the information provided require that we respond only with a GIL.

In your letter you state as follows:

We have a question regarding the correct procedure for claiming a charitable contribution deduction for Illinois income tax purposes, which was originally carried over from a tax year with a net operating loss.

In the past, we have claimed the amount converted to Federal net operating loss under Code Section 170 (D) (2) (B) as an other subtraction on the Illinois Form 1120. However, the Department of Revenue has started disallowing this as a deduction since it is not one of the exempt items listed in Publication 101. However, charitable contributions are an allowable deduction for Illinois income tax purposes. The problem arises because the amount is being allowed on the federal tax return as part of the Line 29a, net operating loss deduction, instead of on line 19 as a charitable contribution. This deduction is not included as part of Line 28 on the federal return, which is the starting point for the Illinois tax return.

In talking to a revenue agent on March 6, 2002, he could not recommend a solution on how to claim the deduction. We discussed the option of attaching a worksheet showing the difference starting with the federal line 28 and taking a subtraction from that to arrive at the amount to report on Illinois line 1. However, in talking with his supervisor, they came to the conclusion if the amount adjusted did not appear on line 29b of the federal return, it would be disallowed.

We do not want to keep filing returns that are rejected by the Department of Revenue, so the revenue agent recommended we contact Legal Services for a solution. If you need more detailed information, please contact us. The problem is working with the federal rules regarding net operating losses and charitable contributions to fit into the rules of the Illinois Department of Revenue. We have an allowable deduction that due to the effect of the federal net operating loss rules cannot be claimed before line 28 on the federal return. This should not cause us to lose the deduction for Illinois income tax purposes, which is what is happening right now.

Please research this issue and notify us of the correct way to handle claiming the prior year contributions which are being allowed by the Internal Revenue Service but being disallowed by the Illinois Department of Revenue.

Please be advised that the Department's long-standing position is that a taxpayer in the situation you have described cannot claim the deduction for charitable contributions against Illinois income tax liability. In computing the Illinois net loss deduction, Illinois Income Tax (IITA) Section 203(b)(2)(D) requires the taxpayer to add back the amount of any federal net operating loss deduction taken in arriving at federal taxable income. Moreover, neither the IITA nor the regulations promulgated thereunder provide the taxpayer with a subtraction modification to either increase the charitable deduction carryover or increase the Illinois net loss carry-forward deduction to address the effects of Internal Revenue Code Section 170(d)(2)(B). Furthermore, IITA Section 203(h) provides that "except as expressly provided in this Section there shall be no modifications or limitations on the amounts of income, gain, loss or deduction taken into account in determining gross income, adjusted gross income or taxable income for federal income tax purposes..." Accordingly, as indicated above, the portion of charitable deductions shifted to the taxpayer's federal NOL will be lost for Illinois income tax purposes.

As stated above, this is a GIL which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you wish to obtain a PLR which will bind the Department with respect to the application of the law to specific facts, please submit a request conforming to the requirements of 2 Ill. Adm. Code Part 1200.

Sincerely yours,

Jackson E. Donley,
Senior Counsel-Income Tax